

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 210
FINAL READING
(SECOND)

Introduced by Bromm, 23; Connealy, 16

Read first time January 10, 2003

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to workers' compensation; to amend section
2 48-125.01, Reissue Revised Statutes of Nebraska, and
3 section 48-106, Revised Statutes Supplement, 2002; to
4 change applicability; to change penalties; and to repeal
5 the original sections.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-106, Revised Statutes Supplement,
2 2002, is amended to read:

3 48-106. (1) The Nebraska Workers' Compensation Act shall
4 apply to the State of Nebraska, to every governmental agency
5 created by the state, and, except as provided in this section, to
6 every resident employer in this state and nonresident employer
7 performing work in this state who employs one or more employees in
8 the regular trade, business, profession, or vocation of such
9 employer.

10 (2) The act shall not apply to:

11 (a) A railroad company engaged in interstate or foreign
12 commerce;

13 (b) Service performed by a worker who is a household
14 domestic servant in a private residence;

15 (c) Service performed by a worker when performed for an
16 employer who is engaged in an agricultural operation and employs
17 only related employees; and

18 (d) Service performed by a worker when performed for an
19 employer who is engaged in an agricultural operation and employs
20 unrelated employees unless such service is performed for an
21 employer who during any calendar year employs ten or more
22 unrelated, full-time employees, whether in one or more locations,
23 on each working day for thirteen calendar weeks, whether or not
24 such weeks are consecutive. The act shall apply to an employer
25 thirty days after the thirteenth such week.

26 (3) If the employer is the state or any governmental
27 agency created by the state, the exemption from the act under
28 subdivision (2) (d) of this section does not apply.

1 (4) If the act applies to an employer because the
2 employer meets the requirements of subdivision (2)(d) of this
3 section, all unrelated employees shall be covered under the act and
4 such employees' wages shall be considered for premium purposes.

5 (5) If an employer to whom the act applies because the
6 employer meets the requirements of subdivision (2)(d) of this
7 section subsequently does not employ ten or more unrelated,
8 full-time employees, such employer shall continue to provide
9 workers' compensation insurance coverage for the employees for the
10 remainder of the calendar year and for the next full calendar year.
11 When the required coverage period has expired, such employer may
12 elect to return to exempt status by (a) posting, continuously in a
13 conspicuous place at the employment locations of the employees for
14 a period of at least ninety days, a written or printed notice
15 stating that the employer will no longer carry workers'
16 compensation insurance for the employees and the date such
17 insurance will cease and (b) thereafter no longer carrying a policy
18 of workers' compensation insurance. Failure to provide notice in
19 accordance with this subsection voids an employer's attempt to
20 return to exempt status.

21 (6) An employer who is exempt from the act under
22 subsection (2) of this section may elect to bring the employees of
23 such employer under the act. Such election is made by the employer
24 obtaining a policy of workers' compensation insurance covering such
25 employees. Such policy shall be obtained from a corporation,
26 association, or organization authorized and licensed to transact
27 the business of workers' compensation insurance in this state. If
28 such an exempt employer procures a policy of workers' compensation

1 insurance which is in full force and effect at the time of an
2 accident to an employee of such employer, such procurement is
3 conclusive proof of the employer's and employee's election to be
4 bound by the act. Such an exempt employer who has procured a
5 policy of workers' compensation insurance may elect to return to
6 exempt status by (a) posting, continuously in a conspicuous place
7 at the employment locations of the employees for a period of at
8 least ninety days, a written or printed notice stating that the
9 employer will no longer carry workers' compensation insurance for
10 the employees and the date such insurance will cease and (b)
11 thereafter no longer carrying a policy of workers' compensation
12 insurance. Failure to provide notice in accordance with this
13 subsection voids an employer's attempt to return to exempt status.

14 (7) Every employer exempted under subdivision (2)(c) or
15 (2)(d) of this section who does not elect to provide workers'
16 compensation insurance under subsection (6) of this section shall
17 give all employees at the time of hiring the following written
18 notice: In this employment you will not be covered by the Nebraska
19 Workers' Compensation Act and you will not be compensated under the
20 act if you are injured on the job or suffer an occupational
21 disease. You should plan accordingly. Failure to provide the
22 notice required by this subsection subjects an employer to
23 liability under and inclusion in the act for all unrelated
24 employees on the basis of failure to give such notice.

25 (8) An exclusion from coverage in any health, accident,
26 or other insurance policy covering a person employed by an employer
27 who is exempt from the act under this section which provides that
28 coverage under the health, accident, or other insurance policy does

1 not apply if such person is entitled to workers' compensation
2 coverage is void as to such person if such employer has not elected
3 to bring the employees of such employer within the act as provided
4 in subsection (6) of this section.

5 (9) For purposes of this section:

6 (a) Agricultural operation means (i) the cultivation of
7 land for the production of agricultural crops, fruit, or other
8 horticultural products or (ii) the ownership, keeping, or feeding
9 of animals for the production of livestock or livestock products;

10 (b) Full-time employee means a person who is employed to
11 work one-half or more of the regularly scheduled hours during each
12 pay period; and

13 (c) Related employee means a spouse of an employer and an
14 employee related to the employer within the third degree by blood
15 or marriage. Relationship by blood or marriage within the third
16 degree includes parents, grandparents, great grandparents,
17 children, grandchildren, great grandchildren, brothers, sisters,
18 uncles, aunts, nephews, nieces, and spouses of the same. If the
19 employer is a partnership, limited liability company, or
20 corporation in which all of the partners, members, or shareholders
21 are related within the third degree by blood or marriage, then
22 related employee means any employee related to any such partner,
23 member, or shareholder within the third degree by blood or
24 marriage. The Nebraska Workers' Compensation Act shall apply to
25 the State of Nebraska and every governmental agency created by it,
26 and to every employer in this state, including nonresident
27 employers performing work in the State of Nebraska, employing one
28 or more employees, in the regular trade, business, profession, or

1 vocation of such employer, except railroad companies engaged in
2 interstate or foreign commerce.

3 (2) The following are declared not to be hazardous
4 occupations and not within the provisions of the Nebraska Workers'
5 Compensation Act. Employers of household domestic servants and
6 employers of farm or ranch laborers. An employer who is excluded
7 from the act under this subsection may elect to bring the employees
8 of such employer within the provisions of the act. Such election
9 is made by the employer obtaining a policy of workers' compensation
10 insurance covering such employees from a corporation, association,
11 or organization authorized and licensed to transact the business of
12 workers' compensation insurance in this state. If an employer who
13 is excluded from the act under this subsection has not elected to
14 bring the employees of such employer within the provisions of the
15 act by obtaining a policy of workers' compensation insurance as
16 provided in this subsection and any health, accident, or other
17 insurance policy covering such employees contains an exclusion of
18 coverage if the insured is otherwise entitled to workers'
19 compensation coverage, such exclusion shall be null and void as to
20 such employees.

21 (3) The procuring by any such employer of such a policy
22 of insurance, referred to in subsection (2) of this section, which
23 is in full force and effect at the time of an accident to any of
24 his or her employees, shall be conclusive proof of such employer's
25 and his or her employees' election to be bound by the Nebraska
26 Workers' Compensation Act, to all intents and purposes as if they
27 had not been specifically excluded by the terms of this section.
28 Such employer of household domestic servants and such employer of

1 farm or ranch laborers who has procured such a policy of insurance
2 may elect to return to the status of being not within the
3 provisions of the Nebraska Workers' Compensation Act by (a) no
4 longer carrying a policy of workers' compensation insurance and (b)
5 posting and thereafter keeping continuously posted for a period of
6 at least one year in a conspicuous place about the place or places
7 where his or her workers are employed a written or printed notice
8 of election not to be bound by the provisions of such act.

9 Sec. 2. Section 48-125.01, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 48-125.01. Any employer who knowingly transfers, sells,
12 encumbers, assigns, or in any manner disposes of, conceals,
13 secretes, or destroys any property or records belonging to such
14 employer, after one of his or her employees has been injured within
15 the purview of the Nebraska Workers' Compensation Act, and with
16 intent to avoid the payment of compensation under such act to such
17 employee or his or her dependents, shall be guilty of a Class I
18 misdemeanor. In any case when such employer is a corporation, any
19 officer or employee thereof, if knowingly participating or
20 acquiescing in the act with intent to avoid the payment of
21 compensation under the Nebraska Workers' Compensation Act, shall be
22 also individually guilty of a Class I misdemeanor as well as
23 jointly and severally liable with such corporation for any fine
24 imposed upon the corporation. In any case when such employer is a
25 limited liability company, any member or manager thereof, if
26 knowingly participating or acquiescing in the act with intent to
27 avoid the payment of compensation under the Nebraska Workers'
28 Compensation Act, shall be also individually guilty of a Class I

1 misdemeanor as well as jointly and severally liable with such
2 limited liability company for any fine imposed upon the limited
3 liability company. In any case when such employer is a limited
4 partnership or a limited liability partnership, any general
5 partner, if knowingly participating or acquiescing in the act with
6 intent to avoid the payment under the Nebraska Workers'
7 Compensation Act, shall also be guilty of a Class I misdemeanor as
8 well as jointly and severally liable with such limited partnership
9 or limited liability partnership, and limited partners shall not be
10 liable.

11 Sec. 3. Original section 48-125.01, Reissue Revised
12 Statutes of Nebraska, and section 48-106, Revised Statutes
13 Supplement, 2002, are repealed.